Internal Revenue
bulletin

Bulletin No. 2001–44
October 29, 2001

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Ct. D. 2072, page 379.
Under section 172 of the Code, an affiliated group's product liability loss (PLL) must be figured on a consolidated, single-entity basis, not by aggregating PLLs separately determined company by company. **United Dominion Industries, Inc. v. United States.**

EMPLOYEE PLANS

Announcement 2001–106, page 416.
Saver's credit; employee plans and individual retirement arrangements. This announcement sets forth frequently asked questions and the related answers about the Saver's Credit described in section 25B of the Code. It also contains examples and a table regarding eligibility for this new nonrefundable credit.

EXEMPT ORGANIZATIONS

Announcement 2001–108, page 419.
A list is provided of organizations now classified as private foundations.

EMPLOYMENT TAX

Ct. D. 2071, page 385.
The Compensation Clause of the U.S. Constitution prevents the government from collecting Social Security taxes, but not Medicare taxes, from federal judges who held office before 1983, when Congress extended those taxes to federal employees. **United States v. Hatter, *et al.***

ADMINISTRATIVE

Notice 2001–66, page 396.
This notice requests comments on and contains proposed audit guidelines for qualified intermediaries (QIs). These QIs are a key component of the withholding and reporting regulations that became effective on January 1, 2001 (T.D. 8734, 1997–2 C.B. 109 and T.D. 8881, 2000–23 I.R.B. 1158).

Announcement 2001–107, page 419.
The Service announces that the Martinsburg Computing Center (MCC) Information Reporting Program Call Site now has a toll-free telephone number.

Announcement 2001–93, page 416.
The Service announces new reporting requirements for employee elective deferral "catch-up" contributions on the 2002 Form W-2. Similar reporting requirements will be addressed in the 2002 Instructions for Forms 1099-R and 5498.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part IV. Items of General Interest

Reporting Elective Deferral Catch–up Contributions on the 2002 Form W-2

Announcement 2001–93

Purpose

This is to advise employers how to report elective deferral catch-up contributions beginning after December 31, 2001.

Statutory Change

The Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107–16) added section 414(v) to the Internal Revenue Code of 1986. For 2002, section 414(v) enables applicable employer plans to allow eligible participants who are age 50 or over to make additional elective deferrals, *i.e.*, "catch-up" contributions.

Reporting on Form W-2

For 2002, employers are required to report participants' elective pension deferrals on Form W-2 in box 12 using Codes D through H and S. For employees' qualified catch-up contributions after 2001, employers must report the elective deferral catch-up contributions in the totals reported for Codes D through H and S.

Reporting on Form 5498

The reporting of catch-up contributions will be addressed in the 2002 Instructions for Forms 1099-R and 5498. No major changes are anticipated.

Saver's Tax Credit for Contributions by Individuals to Employer Retirement Plans and IRAs

Announcement 2001–106

This announcement describes the new "saver's credit," an income tax credit that is available to eligible taxpayers who contribute to a retirement plan or IRA. This announcement includes a sample notice that employers can give to employees explaining the credit.

Q-1: What is the saver's credit?

A-1: The saver's credit is a nonrefundable income tax credit for certain taxpayers with adjusted gross income that does not exceed $50,000. It is equal to a specified percentage of certain employee contributions made to an employer-sponsored retirement plan or of certain individual or spousal contributions to an individual retirement arrangement (IRA) for taxable years beginning after December 31, 2001, and before January 1, 2007. The saver's credit is contained in § 25B of the Internal Revenue Code, which was added by section 618 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Q-2: Who is eligible for the saver's credit?

A-2: Taxpayers who are age 18 or over before the end of their taxable year, other than full-time students or persons claimed as dependents on another taxpayer's return, are eligible for the credit.

For this purpose, students include individuals who, during some part of each of five months during the year, are (a) enrolled at a school that has a regular teaching staff, course of study, and regularly enrolled body of students in attendance, or (b) taking an on-farm training course given by such a school or a state, county, or local government. A student is a full-time student if he or she is enrolled for the number of hours or courses the school considers to be full-time.

Q-3: What is the maximum annual contribution eligible for the saver's credit?

A-3: $2,000 per year.

Q-4: Is the amount of the annual contribution eligible for the saver's credit ever reduced?

A-4: Yes. The amount of any contribution eligible for the saver's credit is reduced by the amount of any taxable distribution received by the taxpayer (or by the taxpayer's spouse if the taxpayer filed jointly with that spouse both for the year during which a distribution was made and the year for which the credit is taken) from any plan described in A-5 below during the testing period. The testing period consists of the year for which the credit is claimed, the period after the end of that year and before the due date (with extensions) for filing the taxpayer's return for that year, and the two taxable years that precede the year for which the credit is claimed. In the case of a distribution from a Roth IRA, this reduction applies to any such distribution, whether or not taxable, that is not rolled over. An amount does not count as a distribution for purposes of the reduction rule if the distribution is a return of a contribution to an IRA (including a Roth IRA) made during the tax year and (1) the distribution is made before the due date (including extensions) of the individual's tax return for that year, (2) no deduction is taken with respect to the contribution, and (3) the distribution includes any income attributable to the contribution.

For example, if an individual contributes $3,000 to a 401(k) plan during 2002, but had taken a $500 IRA withdrawal during that year and a $900 IRA withdrawal during 2001 and neither of these withdrawals was rolled over, the amount of that individual's 2002 plan contribution eligible for the credit is $1,600 ($3,000 - $500 - $900), instead of the $2,000 that would have been eligible for the credit if no withdrawals had been taken.

Q-5: What types of contributions are eligible for the saver's credit?

A-5: Salary reduction contributions to the following arrangements are eligible for the credit: a 401(k) plan (including a SIMPLE 401(k)), a section 403(b) annuity, an eligible deferred compensation plan of a state or local government (a "governmental 457 plan"), a SIMPLE IRA plan, or a salary reduction SEP. The saver's credit is also available for voluntary after-tax employee contributions to a tax-qualified retirement plan or section 403(b) annuity. For purposes of the credit, an employee contribution will be "voluntary" as long as it is not required as a condition of employment. Finally, the saver's credit is available for contributions to a traditional or Roth IRA.

An amount contributed to an individual's IRA is not a contribution eligible for the saver's credit if (1) the amount is distributed to the individual before the due date (including extensions) of the individual's tax return for the year in which the contribution was made, (2) no deduction is taken with respect to the contribution, and (3) the distribution includes any income attributable to the contribution.

Q-6: What is the saver's credit rate?

A-6: The saver's credit rate is based on the taxpayer's adjusted gross income for the taxable year for which the credit is claimed, as follows:

Adjusted Gross Income			
Married filing joint	Head of household	All other filers	Credit
$0-$30,000	$0-$22,500	$0-$15,000	50% of contribution
$30,001-$32,500	$22,501-$24,375	$15,001-$16,250	20% of contribution
$32,501-$50,000	$24,376-$37,500	$16,251-$25,000	10% of contribution
Over $50,000	Over $37,500	Over $25,000	credit not available

For example, a taxpayer whose filing status is single with adjusted gross income of $15,000 may be entitled to a credit equal to 50% of his or her contributions (up to $2,000 of contributions) to a plan described in A-5 above.

Q-7: Does the saver's credit affect an eligible individual's entitlement to any deduction or exclusion that would otherwise apply to the contribution?

A-7: No. Eligible individuals entitled to deduct IRA contributions or to exclude plan contributions from gross income will be able to deduct or exclude those amounts and also claim the saver's credit.

Q-8: Can a taxpayer use the saver's credit to offset both an alternative minimum tax liability and a regular income tax liability?

A-8: Yes.

Q-9: For married taxpayers filing jointly, do contributions by or for either or both spouses give rise to the saver's credit?

A-9: Yes, contributions by or for either or both spouses, up to $2,000 per year for each spouse, can give rise to the saver's credit.

Q-10: Are salary reduction and after-tax employee contributions that are eligible for the saver's credit taken into account in the ADP and ACP nondiscrimination tests of §§ 401(k) and (m) of the Internal Revenue Code?

A-10: Yes. Salary reduction contributions to a 401(k) plan, whether or not those contributions give rise to the saver's credit, are taken into account in the nondiscrimination test for salary reduction contributions (the ADP test) for plans subject to that test. Also, voluntary after-tax employee contributions to a qualified plan, whether or not those contributions give rise to the saver's credit, are taken into account in the nondiscrimination test for employee after-tax contributions (the ACP test) for plans subject to that test.

Q-11: Can an individual claim the saver's credit for an amount contributed to a plan pursuant to automatic enrollment?

A-11: Yes. Any amount that is treated as an elective contribution on behalf of an eligible individual to an employer plan described in A-5 above can give rise to the saver's credit.

Q-12: Can an individual take a projected saver's credit into account in figuring the allowable number of withholding allowances on Form W-4?

A-12: Yes. For information on converting credits into withholding allowances, see IRS Publication 919, *"How Do I Adjust My Withholding?"*

Q-13: Is there a sample notice that employers can use to help explain the saver's credit to employees?

A-13: Yes. Employers are encouraged to tell their employees about the credit. Employers can inform employees in any way they choose, including use of the notice set out below.

Drafting Information

The principal author of this announcement is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this announcement, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 9:30 p.m. Eastern Time, Monday through Friday. Mr. Kuehnle may be reached at (202) 283-9888 (not a toll-free number).

Notice to Employees Regarding Saver's Credit:

This notice explains how you may be able to pay less tax by contributing to [insert name of employer's plan] (the "Plan") or to an individual retirement arrangement ("IRA").

Beginning in 2002, if you make contributions to the Plan or to an IRA, you may be eligible for a tax credit, called the "saver's credit." This credit could reduce the federal income tax you pay dollar-for-dollar. The amount of the credit you can get is based on the contributions you make and your credit rate. The credit rate can be as low as 10% or as high as 50%, depending on your adjusted gross income — the lower your income, the higher the credit rate. The credit rate also depends on your filing status. See the tables at the end of this notice to determine your credit rate.

The maximum contribution taken into account for the credit for an individual is $2,000. If you are married filing jointly, the maximum contribution taken into account for the credit is $2,000 each for you and your spouse.

The credit is available to you if you:
- are 18 or older,
- are not a full-time student,
- are not claimed as a dependent on someone else's return, and
- have adjusted gross income (shown on your tax return for the year of the credit) that does not exceed:

$50,000 if you are married filing jointly,
$37,500 if you are a head of household with a qualifying person, or
$25,000 if you are single or married filing separately.

Example: Susan and John are married and file their federal income tax return jointly. For 2002, their adjusted gross income would have been $34,000 if they had not made any retirement contributions. During 2002, Susan elected to have $2,000 contributed to her employer's 401(k) plan. John made a deductible contribution of $2,000 to an IRA for 2002. As a result of these contributions, their 2002 adjusted gross income is $30,000. If their Federal income tax would have been $3,000 (after applying any other credits to which they are entitled) without having made any retirement contributions, then their federal income tax as a result of making the $4,000 retirement contributions will be only $400 after application of the saver's credit and other tax benefits for the retirement contributions. Thus, by saving $4,000 for their retirement, Susan and John have also reduced their taxes by $2,600.

The annual contribution eligible for the credit may have to be reduced by any taxable distributions from a retirement plan or IRA that you or your spouse receive during the year you claim the credit, during the 2 preceding years, or during the period after the end of the year for which you claim the credit and before the due date for filing your return for that year. A distribution from a Roth IRA that is not rolled over is taken into account for this reduction, even if the distribution is not taxable. After these reductions, the maximum annual contribution eligible for the credit per person is $2,000.

Example: Mark's adjusted gross income for 2002 is low enough for him to be eligible for the credit that year and he defers $3,000 of his pay to his employer's 401(k) plan during 2002. During 2001, Mark took a $400 hardship withdrawal from his employer's plan and during 2002 he takes an $800 IRA withdrawal. Mark's 2002 saver's credit will be based on contributions of $1,800 ($3,000 - $400 - $800).

The amount of your saver's credit will not change the amount of your refundable tax credits. A refundable tax credit, such as the earned income credit or the refundable amount of your child tax credit, is an amount that you would receive as a refund even if you did not otherwise owe any taxes.

The amount of your saver's credit in any year cannot exceed the amount of tax that you would otherwise pay (not counting any refundable credits or the adoption credit) in any year. If your tax liability is reduced to zero because of other nonrefundable credits, such as the Hope Scholarship Credit, then you will not be entitled to the saver's credit.

CREDIT RATES

If your income tax filing status is "married filing joint"

and your adjusted gross income is:	**Your saver's credit rate is:**
$0-$30,000	50% of contribution
$30,001-$32,500	20% of contribution
$32,501-$50,000	10% of contribution
Over $50,000	credit not available

If your income tax filing status is "head of household"

and your adjusted gross income is:	**Your saver's credit rate is:**
$0-$22,500	50% of contribution
$22,501-$24,375	20% of contribution
$24,376-$37,500	10% of contribution
Over $37,500	credit not available

If your income tax filing status is "single," "married filing separate," or "qualifying widow(er)"

and your adjusted gross income is:	**Your saver's credit rate is:**
$0-$15,000	50% of contribution
$15,001-$16,250	20% of contribution
$16,251-$25,000	10% of contribution
Over $25,000	credit not available
